

STATE OF INDIANA) IN THE MARION COUNTY _____ COURT
) SS:
COUNTY OF MARION) CAUSE NO. _____

490030705PL019267

STATE OF INDIANA,)
)
Plaintiff,)
)
v.)
)
CHARLES ALLEY, doing business)
as, Eastside Car & Truck Sales,)
)
Defendant.)

FILED

(46) MAY 10 2007

Elizabeth A. White
CLERK OF THE MARION CIRCUIT COURT

COMPLAINT FOR INJUNCTION
CONSUMER RESTITUTION, COSTS, AND CIVIL PENALTIES

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Mary Ann Wehmueller, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code §24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code §24-5-0.5-4(c).
2. The Defendant, Charles Alley, is an individual doing business as Eastside Car & Truck Sales, ("Alley"), and at all times relevant to this complaint, regularly engaged in the retail sale of used motor vehicles in Marion County located at 1014 S. Post Rd., Indianapolis, Indiana, with a former location at 50 N. Post Road, Indianapolis, Indiana.

FACTS

3. At least since May 12, 2005, the Defendant has engaged in the retail sale of used motor vehicles and sold motor vehicles to consumers.

4. On January 9, 2006 the Indiana Attorney General's Consumer Protection Division issued a title non-delivery warning letter to the Defendant, informing the Defendant of his duty to comply with Indiana's motor vehicle title delivery statute when engaging in vehicle sales. The warning letter is attached hereto and incorporated by reference as State's Exhibit "A".

5. On or about May 12, 2005, Ruth V. Brown (hereinafter "Brown"), purchased a 2001 Ford Explorer, vehicle identification number, _____, hereinafter "Explorer"), from the Defendant for \$8,692.00 cash. A copy of the Brown purchase order is attached hereto as Exhibit "B".

6. Alley did not provide Brown the Explorer title on the date of sale; however Alley and/or his agent told Brown she would receive the title later.

7. Alley failed to provide Brown with a 21-day affidavit on the date of sale, pursuant to Ind. Code §9-17-3-3.5.

8. After purchasing the vehicle Brown requested her title on more than one occasion and Alley or his agents repeatedly promised to provide Brown with the Explorer's title.

9. To date, Alley has failed to deliver the Explorer title to Brown.

COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

10. The transaction identified in paragraph 5 is a "consumer transactions" as defined by Ind. Code §24-5-0.5-2(1).

11. The Defendant, Alley, is a "supplier" as defined in Ind. Code §24-5-0.5-2(3).

12. Defendant's representations that he would deliver title to Brown, and Defendant's failure to deliver title, as referenced in paragraphs 6, 7 and 8, violate the Indiana Deceptive Consumer Sales Act as follows:

- (a) the Defendant and/or his agents misrepresented warranty of title in violation of Ind. Code §24-5-0.5-3(a)(8);
- (b) the Defendant and/or his agents misrepresented the characteristics and benefits of consumer transactions, to wit: that the Defendant would deliver the Explorer's title to Brown, is a violation of Ind. Code §24-5-0.5-3(a)(1).
- (c) the Defendant and/or his agents misrepresented that he would deliver the Explorer's title within a stated or reasonable amount of time in violation of Ind. Code §24-5-0.5-3(a)(10).

13. On the date of sale referenced in paragraph 5, Alley knew or should have known that he could not deliver the Explorer's title to Brown, as represented.

COUNT II
VIOLATIONS OF TITLE DELIVERY STATUTE

14. Plaintiff realleges paragraphs 1 through 13.

15. The Defendant's failure to timely deliver the Explorer's title to Brown violates, Ind. Code §9-17-3-3.

COUNT III
INCURABLE DECEPTIVE ACTS

16. Plaintiff realleges paragraphs 1 through 15.

17. The Defendant intentionally sold Brown the vehicle, knowing he could or would not deliver the title as represented.

18. The Defendant's repeated representations that he would deliver title to Ms. Brown, as referenced in paragraphs 6 and 8, constitute incurable deceptive acts and are actionable by the Attorney General pursuant to Ind. Code §24-5-0.5-1 *et seq.*

IRREPARABLE INJURY

19. The misrepresentations set forth above will continue and will cause irreparable injury unless the Defendant, Alley is enjoined from engaging in further conduct in violation of Ind. Code §24-5-0.5-1 *et seq.*

RELIEF

WHEREFORE, Plaintiff, State of Indiana, requests that the Court enter judgment against the Defendant Alley as follows:

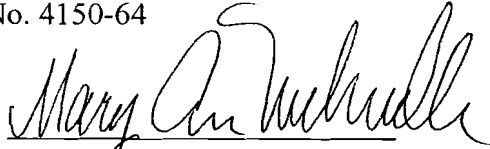
- a. A permanent injunction pursuant to Ind. Code §24-5-0.5-4(c)(1), enjoining Alley, his agents, representatives, employees, successors, and assigns, from:
 - (1) selling motor vehicles without delivering vehicle titles as required by Ind. Code §9-17-3-3;
 - (2) misrepresenting warranty of title in violation of Ind. Code §24-5-0.5-3(a)(8);
 - (3) misrepresenting his ability to deliver vehicle titles within a stated or reasonable period of time in violation of Ind. Code §24-5-0.5-3(a)(10);
 - and,
 - (4) misrepresenting the characteristics and benefits of vehicle sales transactions in violation of Ind. Code §24-5-0.5-3(a)(1).
- b. Consumer restitution for Brown pursuant to Ind. Code §24-5-0.5-4(c)(2), in the total amount of \$8,692.00 or restitution in the form of a Court Order directing the Indiana Bureau of Motor Vehicles to issue titles for the vehicle identified in paragraph 5, to Ruth V. Brown;

- c. Costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. On Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g), for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of \$5,000.00 per violation, payable to the State of Indiana;
- e. On Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8, for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of \$500.00 per violation, payable to the State of Indiana; and
- f. All other proper relief.

Respectfully submitted,

STEVE CARTER
Indiana Attorney General
Atty. No. 4150-64

By:


Mary Ann Wehmüller
Deputy Attorney General
Atty. No. 15251-49A

Office of Attorney General
Consumer Protection Division
Indiana Government Center South
302 W. Washington, 5th Floor
Indianapolis, IN 46204
385548

STATE OF INDIANA
ATTORNEY GENERAL
STEVE CARTER

January 9, 2006

Charles B. Alley
d/b/a Eastside Car & Truck Sales

**RE: File No. 05-CP-58973
Walter Bishop Complaint
WARNING LETTER**

Dear Mr. Alley:

I have reviewed the above-referenced file regarding Walter Bishop's complaint against Eastside Car & Truck Sales. On May 16, 2005, Mr. Bishop purchased a 1998 Dodge Ram from your dealership. You failed to deliver title for the Dodge Ram to Mr. Bishop. The consumer finally received title for the after November 5, 2005.

From a review of these facts, it appears that your dealership violated Indiana's title delivery statute, Indiana Code §9-17-3-3. As you know, the statute requires a dealer to deliver the certificate of title to the purchaser at the time of the sale or delivery, provided the purchaser has made all agreed upon initial payments for the vehicle, including delivery of a trade-in vehicle without hidden or undisclosed statutory liens. If a dealer cannot deliver title to a purchaser on the date of sale or delivery, certificate of title can be conveyed within 21 days after the date of sale if all of the following conditions exist:

- (A) The seller is a licensed vehicle dealer by the state.
- (B) The dealer is not able to deliver the certificate of title at the time of sale.
- (C) The dealer reasonably believes that it will be able to deliver the title, without a lien or an encumbrance on the title, within the twenty- one (21) day period.
- (D) The dealer provides the purchaser with a 21-day affidavit, as prescribed by Ind. Code §9-17-3-3.1 of this chapter.
- (E) The purchaser has made all agreed upon initial payments for the vehicle, including delivery of a trade-in vehicle without hidden or undisclosed statutory liens.

Failure to deliver a vehicle title as required by Ind. Code §9-17-3-3 violates the Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-1 *et seq.* Pursuant to Ind. Code §25-5-0.5-4(c), the Attorney General may bring an action to enjoin a deceptive act and



DIVISION OF CONSUMER PROTECTION
INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR
302 WEST WASHINGTON STREET • INDIANAPOLIS, IN 46204-2770
TELEPHONE (317) 232-6330 • (800) 382-5516

STATE'S
EXHIBIT
A

STATE OF INDIANA
ATTORNEY GENERAL
STEVE CARTER

Charles B. Alley
January 9, 2006
PAGE TWO

can seek a judgment for consumer restitution, investigative costs and civil penalties of up to \$5,000.00 per violation. In lieu of litigation, the Attorney General may seek an Assurance of Voluntary Compliance, in which the dealer agrees to comply with the relevant statutes in all future consumer transactions, in addition to paying restitution and investigative costs.

Since this office has received no other complaints involving these issues against Eastside Car & Truck Sales we will not take further enforcement action on the Walter Bishop complaint. It is recommended that you contact the Bureau of Motor Vehicles Dealer Division or private counsel for advice regarding compliance with the title delivery statute.

If the Attorney General's Office receives any additional title non-delivery complaints against your business, the matter will be referred to our litigation staff for appropriate enforcement action.

Sincerely,



Mary Ann Wehmüller
Deputy Attorney General

Maw:277745



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302 WEST WASHINGTON STREET • INDIANAPOLIS, IN 46204-2770
TELEPHONE (317) 232-6330 • (800) 382-5516

Eastside Car & Truck S

790 N. Post Road
Indianapolis, IN 46219

Phone (317) 899-5307 Fax (317) 899-5308

PLEASE ENTER MY ORDER FOR THE FOLLOWING:

☒ NEW ☐ USED ☐ DEMONSTRATOR ☐ CAR ☒ TRUCK

01 FORD

Explorer XLT

104907

Blue

PRICE OF VEHICLE

9200.00

ACCESSORIES:

PAID IN FULL

5/12/2005

CHAK #

07323167

TOTAL SALES PRICE

9200.00

Less Tax, License, Fees, etc.
Total Cash Due From Buyer

442.00

Down Pay (Supplied by Bill of Sale for Cash)

TOTAL DELIVERED PRICE

Less Dealer Amount of Trade-In

TOTAL DUE FROM BUYER

(If financed by Eastside Car & Truck)

DELIVERED DATE OF DELIVERY

9692.00

TRADE-IN CREDIT: The Manufacturer's Certified Dealer has received a trade-in allowance for the vehicle being traded in. This allowance is based on the vehicle's condition and is subject to change. The dealer is not responsible for the condition of the vehicle being traded in.

The dealer certifies that the vehicle being sold is in good condition and is free from any liens or other encumbrances. The dealer also certifies that the vehicle is not subject to any recall or other safety issue. The dealer is not responsible for the condition of the vehicle being sold.

The dealer is not responsible for the condition of the vehicle being sold. The dealer is not responsible for the condition of the vehicle being sold. The dealer is not responsible for the condition of the vehicle being sold.

DATE: 5-12-2005
BUYER: Ruth V. Brown
STATE: IN
DEALER: Eastside Car & Truck S

USED CASH TRADE-IN ALLOWANCE CREDIT: \$0.00
MAKE OF THIS CAR: FORD
MODEL: Explorer
YEAR: 2004
VEHICLE ID. NUMBER: 104907
BALANCE OWED (Cash Unit): \$0.00
BALANCE OWED (Financing Unit): \$0.00
TRADE-IN ALLOWANCE: \$0.00
CASH DEPOSIT WITH ORDER (Financing Unit): \$0.00
TOTAL CREDIT (Transfer to Left Column): \$0.00

Purchaser is responsible for and shall pay the amount, if any, by which the Balance Owed on the trade-in exceeds the Trade-In Allowance.

WARRANTY INFORMATION
NEW OR DEMONSTRATOR: If the Vehicle is a new or demonstrator vehicle, the only written warranty provided with it is that of the vehicle and factory installed accessories to the most recent applicable printed warranty which is made solely by the Manufacturer of the Vehicle.

USED: If the Vehicle is a used vehicle, the vehicle is sold by Dealer AS IS - WITH ALL FAULTS.

ALL VEHICLES: WHETHER THE VEHICLE IS NEW OR DEMONSTRATOR OR USED, UNLESS DEALER FURNISHES BUYER WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY THE DEALER ON HIS OWN BEHALF, DEALER DISCLAIMS ALL WARRANTIES, WRITTEN, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND DEALER EXPRESSLY DISCLAIMS ANY LIABILITY TO PURCHASER FOR ANY CONSEQUENTIAL DAMAGES, LOSS OF TIME, OR OTHER VENUE ARISING OUT OF THE PURCHASE OR OTHER ACTION OF THE VEHICLE.

Terms of Payment of Balance Due on Delivery:
CASH: \$0.00
FINANCING: \$0.00
BY OTHER FINANCIAL INSTITUTION: \$0.00

THE ADDITIONAL TERMS AND CONDITIONS ON THE REVERSE SIDE OF THIS ORDER ARE INCORPORATED BY REFERENCE AND ARE A PART OF THIS ORDER.

Signature of Buyer: Ruth V. Brown
Signature of Dealer: [Signature]
Date: 5/12/2005